

**CALIFORNIA VICTIM COMPENSATION AND
GOVERNMENT CLAIMS BOARD**

Victim Compensation Program

**First Floor Hearing Room
630 "K" Street
Sacramento, California**

October 24, 2003

DESIGNATION OF BOARD DECISION AS PRECEDENT

Background

The California Victim Compensation and Government Claims Board (Board) is authorized to designate a decision in whole or part as a precedent decision if it: (1) addresses a legal or factual issue of general interest; (2) resolves a conflict of law; (3) provides an overview of existing law or policy; (4) clarifies existing law or policy; (5) establishes a new rule of law or policy; or (6) contains a significant legal or policy determination of general application. (Cal. Code Regs., tit. 2, § 619.7(c).) Once designated as a precedent decision, it can be relied upon as legal authority to interpret and implement law governing the Victim Compensation Program. (Cal. Code Regs., tit. 2, § 619.7(d).)

One of the decisions adopted by the Board at its meeting of August 22, 2003, addressed legal and factual issues of general interest and clarifies existing law and policy. It would be useful to the Board, staff, and the public if it were adopted as a precedent decision. For that reason, the Board directed staff to return this decision to the Board at this meeting for adoption as precedent.

Discussion

The application is based on the sexual abuse of the applicant's daughter by the applicant's former fiancé. The mother of the victim requested reimbursement of additional mental health services that was denied because the treatment focused on the mother's past sexual abuse, rather than her daughter's abuse. This decision clarifies that a derivative victim's mental health treatment must be focused on issues necessary as a direct result of the qualifying crime.

Recommendation

It is recommended that the Board designate as precedent its decision *In the Matter of the Application of Debbie D.* This will allow the Board to cite this decision as its authority in similar appeals.

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7 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
8 **OF THE STATE OF CALIFORNIA**
9

10 In the Matter of the Application of:

11 **Debbie D.**

12 Application No. 691914

Precedent Decision No. 03-04

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15 Janice F. Hill, Hearing Officer, California Victim Compensation and Government Claims Board
16 (Board), conducted a telephone hearing on this application on June 3, 2003. The Applicant, Debbie D.,
17 attended the hearing by telephone from Las Vegas, Nevada, and testified under oath.

18 This hearing was closed to the public under Government Code section 13963.1.

19 **Claim History**

20 The application was received on January 24, 2002,¹ and was based on a violation of
21 Penal Code section 647.6, annoying a child, by Applicant's former fiancé who had molested
22 Applicant's daughter, Francesca D., in 1994. Francesca remembered the crime and reported it to
23 police in October 2001. To date, the Board has paid a total of \$141.82 for mental health expenses to
24 the victim and \$890.00 to Applicant as a derivative victim for outpatient mental health counseling
25 expenses. Additional bills for mental health counseling expenses for the Applicant totaling \$1,700.00
26 were submitted and recommended for denial in November 2002. Applicant sent a letter indicating she
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28 ¹ Because the application was filed before the effective date of the current statute, Statutes 2002, chapter 1141 (Senate Bill
29 1423, Chesbro), all references are to the Government Code sections in effect on or before December 31, 2002.

1 did not receive the November notice which was resent to her on January 7, 2003. An appeal of the
2 denial of those mental health expenses was received on February 21, 2003, and was considered a
3 request for reconsideration which was allowed by the Board on its own motion at the April 25, 2003,
4 Board Meeting.

5 **Summary of Issues**

6 Program staff, including the Board's Quality Assurance Mental Health (QAMH) unit,
7 recommended that additional expenses for mental health counseling be denied because staff determined
8 that they were not necessary as a direct result of a qualifying crime.

9 **Findings of Fact**

10 According to the incident report, on December 31, 1994, Applicant's daughter, Francesca
11 (DOB March 3, 1984), was fondled by her mother's live-in boyfriend who also exposed himself to
12 Francesca. Francesca reported the incidents in October 2001 to the local police.

13 The Applicant, Debbie D., filed an application with the program in November 2001 for
14 Francesca as a direct victim and in January 2002 for herself as a derivative victim. Both claims were
15 allowed and the Board assisted Francesca in relocating from California to Minnesota in 2002.

16 The Applicant received mental health treatment from February 2002 through October 2002. In
17 January 2002, the Board requested and received input from her mental health provider in the form of
18 an "Initial Treatment Plan " (ITP) which was completed and received by the Board in February 2002.
19 In October 2002 the Board requested an "Extended Treatment Plan" (ETP) which was completed and
20 received on October 23, 2002. The ETP was completed by the same Marriage Family Therapy intern.
21 Both the ETP and ITP described the mental health treatment received by Applicant as 100% related to
22 the crime against Francesca.

23 The ETP also requested information about future plans for treating the Applicant. The
24 response to item (20) "Please note any changes you wish to make in the goals for the next treatment
25 period" was to "Identify and express effects of childhood sexual abuse." Further, in response to the
26 question regarding conditions which were not originally caused by the crime but were exacerbated by
27 the crime such that they now require attention, "Childhood sexual abuse of the client" was listed in
28 both the ITP and ETP.

1 At the hearing, Debbie D. testified that she had been sexually abused as a child and that is why
2 she was so horrified when she became aware that her daughter had been fondled by someone she
3 trusted enough to consider marrying. Both she and her daughter moved out of the area because of the
4 presence of the perpetrator in their lives. Debbie feels now that her daughter has moved back from
5 Minnesota to Nevada, she needs to heal her own past wounds in order to assist her daughter in
6 recovering from the incident. She testified that she is making progress with the guilt feelings that
7 overwhelmed her when she discovered in February 2001 that the molest of her daughter had occurred
8 in 1994.

9 The Hearing Officer, after reviewing the record, including the ITP, ETP and the testimony
10 offered by the Applicant, found the following facts:

- 11 1. In October 2001, the Applicant's daughter Francesca reported to police that she had been
12 accosted by her mother's live-in boyfriend in 1994. The incident report dated October 11,
13 2001, lists Francesca D. as a Reportee and not a victim and lists the Penal Code violation as
14 647.6(A) "Offense against the family and children/annoyance."
- 15 2. Both the ITP and ETP list the childhood sexual abuse of the client, Debbie D., as a
16 condition that was exacerbated by the crime against the Applicant's daughter.
- 17 3. The ETP states that the therapist has as a goal for the next treatment period to "identify and
18 express effects of childhood sexual abuse" of the Applicant.

19 **Determination of Issues**

20 The Board shall approve an application for assistance if a preponderance of the evidence
21 shows that as a direct result of a crime the victim incurred an injury that resulted in a pecuniary loss.
22 (Gov. Code, § 13964(a).) At the hearing, the Applicant shall have the burden of establishing by a
23 preponderance of the evidence that, as a direct result of a crime, the victim incurred an injury that
24 resulted in a pecuniary loss. (Gov. Code, § 13963(c).) Once the application is approved, the Board
25 shall determine what type of state assistance will best aid the derivative victim.

26 (Gov. Code, § 13965(a).) A pecuniary loss includes outpatient psychiatric, psychological or mental
27 health counseling which became necessary as a direct result of the crime for which the derivative
28 victim has not been and will not be reimbursed from any other source. (Gov. Code, § 13960(d)(1),(2).)
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1 The issue presented is whether or not the mental health treatment sought by the Applicant
2 continues to be necessary as a direct result of the crime against her daughter in 1994. The Board
3 approved the application filed by Debbie D. as a derivative victim. The Board has reimbursed \$890
4 for mental health treatment provided to Debbie D. from February through October 2002. The Board
5 has approved \$141.28 in mental health treatment for the victim.

6 The therapist in the reports, and Debbie D. in her testimony, agree that her counseling
7 treatment at this point in time is primarily concerned with coming to terms with her own past sexual
8 abuse. Debbie D. asserts that by coming to terms with her own past sexual abuse problems she will be
9 better able to assist her grown daughter with issues relating to her daughter's abuse. However, the
10 Board's regulations and statutes are clear that the program compensates victims and derivative victims
11 for treatment that is necessary as a direct result of the qualifying crime. Unfortunately, the childhood
12 sexual assault of the Applicant is not before us, even though issues of her childhood molestation may
13 need to be resolved for her benefit. The statutory requirement is that treatment be necessary as a direct
14 result of the qualifying crime. Debbie D. has not demonstrated that the mental health treatment sought
15 by her continues to be necessary as a direct result of the crime of molest against her daughter.

16 **Order**

17 The applicant is ineligible for program assistance for payment of additional mental health
18 expenses.
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7 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
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10 In the Matter of the Application of:

11 **Debbie D.**

12 Application No. 691914

Notice of Decision

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14 On October 24, 2003, the California Victim Compensation and Government Claims Board
15 adopted the attached Decision as a Precedent.
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19 Date: October ____, 2003

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21 JUDITH A. KOPEC
22 Supervising Staff Counsel
23 California Victim Compensation and
24 Government Claims Board
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